

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeene G. Kelly.

El Paso Natural Gas Company

Docket Nos. RP00-336-016  
and RP00-336-015

Aera Energy, LLC, et al.,  
Complainants

Docket No. RP01-484-004

v.

El Paso Natural Gas Company  
Respondent

Texas, New Mexico and Arizona Shippers,  
Complainants

Docket No. RP01-486-004

v.

El Paso Natural Gas Company  
Respondent

KN Marketing, L.P.,  
Complainant

Docket No. RP00-139-006

v.

El Paso Natural Gas Company  
Respondent

ORDER ON REHEARING

(Issued March 8, 2004)

1. On July 9, 2003, the Commission issued two orders in the above-captioned proceeding, an Order on Rehearing <sup>1</sup> and an Order Accepting Allocation Report and

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<sup>1</sup> 104 FERC ¶ 61,045 (2003).

Compliance Filing.<sup>2</sup> Timely requests for rehearing or clarification of these orders were filed by El Paso Natural Gas Company (El Paso), BHP Copper (BHP), jointly by the Public Utilities Commission of the State of California (CPUC) and Southern California Edison Company (SoCalEd) (jointly the California parties), jointly by Indicated Shippers and Southern California Gas Company (SoCalGas), ONEOK Energy Marketing and Trading Company (ONEOK), and Southwest Gas Corporation (Southwest). The Arizona Public Service Company and Pinnacle West Energy Corporation (APS/Pinnacle) filed an answer to the request for rehearing of Southwest. El Paso filed an answer in opposition to the request for rehearing of the California parties. As discussed below, the requests for rehearing are generally denied. However, the Commission will grant Southwest's request for rehearing on the issue of constraints on the Yuma lateral.

2. This order is in the public interest because it furthers the Commission's goal of restoring reliable firm transportation service on the El Paso system.

### **I. Background**

3. On May 31, 2002, the Commission issued an Order on Capacity Allocation and Complaints (May 31 Order)<sup>3</sup> that established a framework for resolving the capacity allocation problems that had rendered firm service on El Paso unreliable in recent years. In order to restore reliable firm service on El Paso, the May 31 Order, among other things, directed that service under full requirements (FR) contracts be converted to service under contract demand (CD) contracts<sup>4</sup> and that system-wide receipt point rights be converted to specified rights at specific receipt points. On September 20, 2002, the Commission issued an order<sup>5</sup> that clarified certain of the rulings in the May 31 Order and adopted a capacity allocation methodology for El Paso. On March 31, 2003, El Paso filed tariff sheets to comply with these orders.

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<sup>2</sup> 104 FERC ¶ 61,044 (2003).

<sup>3</sup> 99 FERC ¶ 61,244 (2002), reh'g, 104 FERC ¶ 61,045 (2003).

<sup>4</sup> El Paso had historically served its firm customers under two types of contracts, FR contracts and CD contracts. CD contracts provide specific delivery rights up to specified quantity limitations at delivery points designated in the contracts. FR contracts provided that El Paso must deliver and the customer must take from El Paso, the customer's full gas requirements each day; there was no limit on the amount of gas the FR customers could take other than the capacity of their delivery points.

<sup>5</sup> 100 FERC ¶ 61,285 (2002).

4. On July 9, 2003, the Commission issued an order on rehearing (Rehearing Order)<sup>6</sup> that generally denied requests for rehearing of the May 31 and September 20 Orders. Also on July 9, 2003, the Commission issued an order accepting El Paso's allocation report and filing to comply with the May 31 Order, subject to certain modifications (Compliance Order).<sup>7</sup> The July 9 Compliance Order found that El Paso had generally conducted its capacity allocation and receipt point allocation processes in accordance with the Commission's directives. However, the Commission rejected, as unsupported, El Paso's proposal to establish Route Quantities for specific combinations of receipt and delivery points and required modification to El Paso's proposal regarding reservation charge credits. That order also found El Paso's proposal to allocate delivery points on a D-Code basis<sup>8</sup> acceptable.

5. On August 1, 2003, El Paso filed pro forma tariff sheets in compliance with the July 9 Orders. The proposed tariff sheets removed the reference to Route Quantities as directed by the July 9 Compliance Order. However, El Paso stated that it was necessary to couple receipt and delivery points on a volumetric basis to assure reliable firm service, and El Paso proposed use of Receipt-Delivery Point Combinations (R-D Combos) to achieve this purpose. On August 29, 2003, the Commission issued an order accepting and suspending portions of the compliance filing, subject to conditions and to the outcome of a technical conference. The conversion of FR contracts to CD contracts on El Paso's system became effective September 1, 2003.

6. A technical conference was held on September 24, 2003. At the conclusion of the conference, the parties submitted comments on the issues addressed at the conference including the use of R-D Combos, El Paso's use of D-Codes, and demand charge credits. On January 29, 2004, the Commission issued an order<sup>9</sup> that found, among other things, that El Paso's use of R-D Combos is an appropriate interim measure to assure reliability on the El Paso system pending completion of El Paso's Order No. 637 compliance proceeding. The order also encouraged El Paso and its shippers to address concerns over the use of D-Codes.

7. El Paso has reported that since the conversion of FR contracts and reallocation of capacity effective September 1, 2003, the routine pro rata allocations of capacity on

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<sup>6</sup> 104 FERC ¶ 61,045 (2003).

<sup>7</sup> 104 FERC ¶ 61,044 (2003).

<sup>8</sup> D-Codes are clusters of delivery points and represent an aggregation of individual meters.

<sup>9</sup> 106 FERC ¶ 61,083 (2004).

El Paso Pipeline have been eliminated.<sup>10</sup> Thus, the intent of the reallocation has been achieved thus far on the El Paso system.

## **II. Discussion**

### **A. Rehearing of the July 9 Rehearing Order**

8. Parties seek rehearing of the July 9 Rehearing Order on issues of cost allocation and capacity to the California Border. In addition, parties seek clarification of the Commission's ruling on scheduling priority for FT-2 transportation and demand charge credits.

#### **1. Cost Reallocation**

##### **a. Revenue Requirement and Related Capacity**

9. In the September 20, 2002 Order, the Commission held that, after conversion of the FR service to CD service, El Paso must reallocate the FR revenue responsibility among the FR shippers pro rata based on their new CD levels. In the July 9 Rehearing Order, the Commission, in response to requests, reconsidered this ruling and granted rehearing, finding that a reallocation of costs among the FR shippers was not necessary to resolve the capacity allocation problems on the El Paso system. In the July 9 Rehearing Order, the Commission explained that its Section 5 action in this proceeding is narrow and is intended only to remedy the firm service interruptions on El Paso Pipeline that have rendered firm service unjust and unreasonable. The Commission stated that reallocating costs among the FR shippers would go beyond this narrow purpose and would unnecessarily disturb the parties' revenue responsibility bargain that was negotiated and agreed to as part of the 1996 Settlement. Southwest and BHP request rehearing of this ruling.

10. Southwest and BHP argue that the Commission erred in failing to require a reallocation of revenue responsibility consistent with the establishment of new firm service rights for the former FR shippers. Southwest argues that by not reallocating costs based on the former FR shippers' new CDs, the Commission has placed Southwest at a competitive disadvantage by changing the relationship between service

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<sup>10</sup> See El Paso's Initial Comments on the Technical Conference, October 14, 2003 at 2-3.

entitlements and revenue responsibility.<sup>11</sup> Southwest states that while the 1996 Settlement gave it the same unit rates for the same firm service as two of its competitors, APS and Salt River Project, the July 9 Orders produce for Southwest a unit rate that is 236 percent of the APS unit rate and 475 percent of the Salt River Project unit rate. Southwest states that the Commission has not acknowledged that it is requiring Southwest to pay a rate many times the rate of other similarly-situated shippers or explained why such a result is just and reasonable and not unduly prejudicial. Similarly, BHP states that its effective unit rate is significantly higher than that of any other converting FR shipper.<sup>12</sup>

11. Further, Southwest argues that while the Commission's stated rationale is to minimize disruption of the settlement bargain, it has not demonstrated that a reallocation of costs to reflect the new CD levels would disturb that bargain to any greater extent than would the new rates directed by the July 9 Orders. Southwest states that while it is true that the 1996 Settlement contains Billing Determinants that would be changed by a Commission-mandated cost reallocation, the Settlement also includes zonal rates for firm service to Arizona, New Mexico, and Texas that will be changed if the Commission does not mandate cost reallocation. Southwest asserts that the 1996 Settlement provided for identical rates for each of the Zone 4 (Arizona) customers,<sup>13</sup> and there is nothing in the Settlement that suggests that this rate equality

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<sup>11</sup> Southwest states that Appendix D of the Compliance Order "assigns" it a billing determinant of 329,754 Mcf/d, or approximately 44.1 percent of the total EOC billing determinants. (We note that the Commission did not "assign" Southwest a billing determinant; 329,754 Mcf/d is the billing determinant agreed to in the 1996 Settlement and was included in Appendix D for comparison purposes). At the same time, Southwest states, it is assigned a peak month CD of 727,950 Mcf/d, approximately 26.8 percent of the total peak month CDs. By way of comparison, Southwest asserts, APS/Pinnacle is assigned a billing determinant of 64,557 Mcf/d, or 8.6 percent of the total, and is assigned a peak month CD of 375,888 Mcf/d, 13.8 percent of the total. Southwest states that unit rates resulting from these relationships can be compared by reference to El Paso's August 1, 2003 compliance filing; exhibit D to its filing includes a rate comparison for all FR shippers under the July 9 Order. Southwest states that its unit rate for firm service to Arizona is \$5.4983 per dth, while the same firm service to Arizona is \$2.3287 per dth for APS and \$1.1575 per dth for Salt River Project.

<sup>12</sup> BHP states that its effective unit rate is \$7.82/dth compared to the average for Arizona customers of \$3.54/dth.

<sup>13</sup> Southwest included as Exhibit A to its request for rehearing materials from the Settlement that show a rate of \$7.35012/dth for each Zone 4 customer. However,  
(continued. . . )

is any less a part of the Settlement bargain than the Billing Determinants set forth in the Settlement.

### **Commission Determination**

12. The difference in effective rates among the FR customers about which Southwest and BHP complain does not result from the conversion of FR service to CD service, but stems from the level of FR service provided by El Paso pursuant to the 1996 Settlement. At the time of the Settlement, each FR shipper was assigned an agreed-to revenue responsibility, but was not limited to any specific demand or volume level in connection with that revenue responsibility. Thus, the Settlement permitted changes in the FR shippers' use of the El Paso system with no change in revenue responsibility. Some FR shippers' use of the system grew more under the FR contracts than others, but it was never contemplated that the growth under the FR contracts would change the revenue responsibility of the FR shippers. Southwest and BHP, like all parties to the Settlement, knew when they entered into the Settlement, that their service demands could increase or decrease, and their service demands relative to those of their competitors could change over the 10-year period without a change to their rates or revenue responsibility. Therefore, the Commission finds that, contrary to the implications of Southwest's arguments, under the 1996 Settlement, there was no provision or contemplation that the initial relationship between revenue responsibility and service entitlement would be maintained throughout the term of the Settlement. The Commission recognized this in the May 31 Order when it explained that basing the new CDs on billing determinants would not be reasonable because "[w]hile billing determinants determine the current allocation of cost to the FR shippers pursuant to the 1996 Settlement, they do not reflect the current use of the system."<sup>14</sup>

13. The conversion methodology adopted by the Commission provides that each former FR shipper's new CD is based on that shipper's use of the system during the period prior to the conversion. The Commission did not change the relationship between each shipper's revenue responsibility and its use of the system at the time of conversion. That relationship was the existing practice on the system, and the Commission merely preserved that relationship through the end of the term of the

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(continued. . . )

these unit rates were derived from the Settlement's billing determinants and the agreed-to revenue responsibility, which were not related to use of the system. These unit rates do not represent the amount that the FR shippers paid for each unit of service any more than billing determinants represent the FR shippers' use of the system.

<sup>14</sup> 99 FERC ¶ 61,244 at 62,008-09.

Settlement. Southwest's and BHP's revenue responsibility remains the same as bargained for in the 1996 Settlement. Their entitlement to capacity is based on their service amounts prior to the conversion to CD service. Southwest and BHP are not harmed by this methodology because it does not change their revenue responsibility or reduce their entitlement to capacity to levels below those specified in the 1996 Settlement. It does limit future growth for all former FR shippers, including BHP and Southwest, in order to restore reliable firm service on the El Paso system.

14. In directing the conversion of FR service to CD service, the Commission acted to address a specific problem on El Paso's system that led to pro rata allocations of firm capacity and reduced service quality for firm service customers, but to leave the remainder of the settling parties' bargain intact. Part of that remaining bargain was a fixed revenue responsibility for a 10-year term and such responsibility was an important part of this complex settlement.<sup>15</sup> The Commission need not alter this revenue responsibility to remedy the problem of pro rata capacity allocations on the El Paso system. The requests for rehearing are denied.

#### **b. Capacity Release**

15. In addition, Southwest asserts that the July 9 Orders alter the ability of the former FR shippers to recover their costs through capacity release. Southwest states that under FR service, the FR shippers could release capacity up to their billing determinants, and therefore capacity releases were linked to the amount of capacity for which each shipper paid. Southwest states that pursuant to the new CD rights, there is no such relationship. Southwest states that APS can now sell through capacity release 3.36 times the amount of capacity it could previously and Salt River can sell 6.76 times the amount of capacity that it could previously, but Southwest can sell only 1.42 times the capacity it could previously.<sup>16</sup> Southwest states that APS and Salt River can sell relatively more capacity through capacity release, allowing them to recover a greater share of their capacity costs when the market value of the capacity is equal to or less than their new unit rates because Southwest would have to compete by selling its capacity at a discount. Southwest states that this destroys the balance between cost and capacity quantities that could be sold through capacity releases, and thus alters the relative cost responsibility agreed upon under the 1996 Settlement.

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<sup>15</sup> In approving the 1996 Settlement rates the Commission stated that the settlement rates will provide long-term rate certainty and stability. 79 FERC ¶ 61,028 at 61,126 (1997). The Offer of Settlement and Request for Approval of Stipulation and Agreement accompanying the 1996 Settlement also states at page 7 that one of the benefits of the Settlement is long term rate certainty and stability.

<sup>16</sup> Southwest states that these relationships are based on average annual CDs after conversion and previous billing determinants prior to conversion.

Thus, Southwest asserts, the Commission's assumption that it has not altered the cost responsibility is flawed.

### **Commission Determination**

16. Southwest is correct that APS and Salt River received a greater percentage increase in capacity above their billing determinants than did Southwest, and, therefore, theoretically could release more capacity at a lower rate than Southwest. However, any potential inequality is minimized because in allocating capacity among the FR shippers, the Commission based the allocations on actual past usage on a monthly, rather than annual, basis. The FR shippers, including APS and Salt River, have argued that their demands are increasing, not decreasing, and have been concerned whether they will have sufficient capacity to meet their obligations. Accordingly, any capacity available for release by the former FR shippers should be minimal.

17. Moreover, the Commission's capacity release regulations were designed to allow pipeline customers paying straight fixed variable (SFV) rates to mitigate the costs of holding firm capacity and are intended to promote competition and the efficient use of pipeline capacity by allowing shippers to release unneeded capacity to other shippers in competition with the pipeline's capacity.<sup>17</sup> The regulations do not guarantee that any shipper will be able to release all the capacity it wants to release at any specific rate, or that it will be able to recoup as much of its costs as other shippers who release their capacity. In El Paso's restructuring under Order No. 636, the Commission determined that limiting the amount of capacity that the FR shippers could release to their billing determinant level was appropriate because without such limits, shippers would have no limits on the amount of capacity they could release since there was no contractual limit to the amount of capacity they could demand.<sup>18</sup> Since the former FR shippers now have specified contract demand limits, this FR service limitation is no longer necessary. All shippers can release capacity up to their CD levels at rates up to the pipeline's maximum rates.<sup>19</sup> This is consistent with the Commission's policy and regulations, and Southwest is not treated differently than any other shipper in this regard.

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<sup>17</sup> See, e.g., South Gulf Pipeline Co., 104 FERC ¶ 61,160 at P 29 (2003).

<sup>18</sup> See El Paso Natural Gas Co., 61 FERC ¶ 61,333 at 62,287 (1992); 62 FERC ¶ 61,311 at 62,992 (1993).

<sup>19</sup> For converting FR shippers, El Paso's maximum rate is higher than their effective rates.



### **c. Proper Price Signals**

18. Southwest argues that by failing to reallocate revenue responsibility among the converting FR shippers, the July 9 Orders have not assured that shippers will receive the service they are paying for and have not established proper price signals for expansion. Southwest states that because it will pay a higher effective unit rate than the effective unit rates paid by its competitors, it will not receive the service it is paying for as compared to those competitors. Moreover, Southwest asserts, the price signals given for expansion are murky at best. Southwest states that the Commission's Certificate Policy Statement<sup>20</sup> is intended to prevent subsidies so that construction is premised upon need and will be paid for by those receiving the benefit. Southwest argues that creating subsidies among converting FR shippers should be avoided because it will distort the price of new capacity and capacity sold in the release market.

### **Commission Determination**

19. In the May 31 and July 9 Orders, the Commission concluded that FR contracts are no longer just and reasonable on El Paso's system. In explaining all the reasons for this conclusion, the Commission stated that rates paid for FR service do not ration capacity and provide unfair competitive advantages for new power plants that are served under existing FR contracts. The Commission also stated that because FR customers who seek to grow will have to bid for additional capacity, El Paso will have an incentive to build necessary capacity to serve growing demand after conversion of the contracts. Because the former FR shippers did not have to purchase additional capacity to serve increased demands, but could increase their demands under their existing contracts, there was no economic incentive for El Paso or any other pipeline to construct additional capacity to meet these needs.<sup>21</sup> It is the increased demand as reflected in properly structured services (e.g., CD as opposed to FR) that will help establish proper price signals for future expansions. In other words, with the conversion of FR contracts to CD contracts, shippers will have to purchase additional capacity to serve their growing needs, and this demand for additional capacity will provide pipelines with the incentive for expansion.

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<sup>20</sup> Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, corrected, 89 FERC ¶ 61,040 (1999), clarified, 90 FERC ¶ 61,128, clarified, 92 FERC ¶ 61,094 (2002).

<sup>21</sup> May 31 Order, 99 FERC at 62,003; July 9 Rehearing Order at P 61.

20. One of the goals of the Commission's Certificate Policy Statement<sup>22</sup> cited by Southwest is to assure that new construction projects should be able to stand on their own financially without subsidies from existing shippers. The elimination of subsidies from existing shippers recognizes that incremental pricing for new facilities sends the proper price signals to the market.<sup>23</sup> Changing the Settlement revenue responsibility through a reallocation among the FR shippers will not affect rates charged for new capacity and does not affect signals to the market for expansion capacity.

#### **d. Compliance with Commission Regulations**

21. Southwest asserts that the July 9 Orders also result in effective rates that violate the Commission's regulations. Southwest argues that the rates "established" by the July 9 Orders violate Section 284.7(b) of the Commission's regulations, which prohibits undue discrimination, Section 284.10(b)(3), which requires pipeline revenue requirements to be obtained by providing the projected units of service at the maximum rate for each service, Section 284.10(c)(2), which provides that rates must be designed to recover costs on the basis of projected units of service and that a unit reservation fee be established, Section 284.10(c)(4), which requires that a maximum rate recover costs on a unit basis, and Section 284.10(c)(5)(i), which requires pipeline tariffs to state a maximum rate for each service, not a maximum rate for each customer.

#### **Commission Determination**

22. As explained above, the July 9 Orders do not "establish" rates, but maintain each shipper's revenue responsibility approved as an uncontested "black box" settlement in the 1996 Settlement, and tie those Settlement revenue responsibilities to each customer's new CD.<sup>24</sup> The Commission approved the 1996 Settlement as fair and reasonable and in the public interest, and did not independently analyze the rates

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<sup>22</sup> Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, corrected, 89 FERC ¶ 61,040 (1999), clarified, 90 FERC ¶ 61,128, clarified, 92 FERC ¶ 61,094 (2002).

<sup>23</sup> 88 FERC ¶ 61,227 at 61,746.

<sup>24</sup> The Commission approved the Settlement rates as uncontested for the consenting parties. El Paso Natural Gas Co., 79 FERC ¶ 61,028, reh'g denied, 80 FERC ¶ 61,084 (1997).

under the just and reasonable standard.<sup>25</sup> When El Paso files its new rate case at the end of the Settlement term, its proposed rates will be evaluated under the just and reasonable standard and the regulations that apply to Natural Gas Act Section 4 rate filings. However, because the Commission is simply maintaining the previously-approved uncontested settlement revenue responsibility, a new review under the just and reasonable standard and the regulations cited by Southwest is not appropriate here.

#### **e. Revenue Responsibility and Historic Use of the System**

23. BHP states that under the Commission's rulings, it remains responsible for its entire cost allocation under the 1996 Settlement, yet has firm rights to far less capacity than it was entitled to and used at the time of the Settlement. BHP argues that requiring it to pay for the level of service negotiated in the 1996 Settlement when its new CD falls short of its historic needs is unjust and unreasonable and violates Section 5 of the NGA. Further, BHP argues that the Commission's abrogation of one element of the 1996 Settlement while retaining the cost responsibility linked to the FR service distorts the bargain struck by the parties. BHP states that partial abrogation of the Settlement leaves it with the concessions it made, but without the benefits it had been promised. BHP states that the Commission should either reallocate revenue responsibilities or provide BHP with an appropriate capacity allocation in light of the 1996 Settlement.

#### **Commission Determination**

24. In the July 9 Rehearing Order, the Commission addressed BHP's argument concerning the allocation methodology and concluded that using the higher of the Settlement billing determinants or the most recent 12-month period for all shippers, including BHP, is a just and reasonable basis for allocating capacity among the FR shippers. The Commission will not revisit that issue here. Further, as explained above, each converting FR shipper will continue to pay the "black box" settlement rates to which it had agreed and it will receive a share of El Paso Pipeline's capacity based on its current use of the system, but in no event less than its 1996 Settlement

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<sup>25</sup>79 FERC at 61,126. In ruling on an uncontested settlement, the Commission may approve uncontested settlement rates as fair and reasonable and in the public interest without a determination on the merits that the rates are just and reasonable. *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 209 (1984).

billing determinants. In the case of BHP, its allocation equal to its 1996 Settlement billing determinants is far greater than its use of the system prior to conversion.<sup>26</sup>

## **2. California Issues**

25. The California parties agree that the Commission properly directed the conversion of FR service to CD service, but argue that it erred in several of the findings it made in support of that determination, and that these findings adversely affect the rights of California CD shippers and customers. First, these parties argue that the Commission misinterpreted the pro rata capacity allocation mechanism in the 1990 Settlement as authorizing routine and regular cutbacks of mainline capacity for California shippers. They argue that the Settlement did not authorize these pro rata allocations, and that the allocations violated the Commission's regulations. Further, they argue that the Commission erroneously found that El Paso did not have an obligation to expand its system to meet the growing needs of the FR customers and erred in interpreting El Paso's Settlements as support for El Paso downgrading the California shippers' firm capacity rights to meet the FR shippers' growth demand. These parties also argue that the Commission erred by ignoring language in the 1996 Settlement assuring California shippers that El Paso would provide 3,290 MMcf/d of firm capacity for ten years. Finally, the California parties argue that the Commission erred in finding that 210 MMcf/d of capacity was necessary to manage transients on the El Paso system.<sup>27</sup>

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<sup>26</sup> BHP's use of the El Paso system during the 12-month period prior to conversion ranged from a high of 253 Mcf/d in December 2001 to a low of zero in July and August 2002. BHP was allocated a CD of 12,910 Mcf/d which is equal to its 1996 Settlement billing determinant.

<sup>27</sup> El Paso filed an answer to the California Parties' request for rehearing. El Paso does not respond to the substantive arguments of these parties because of the likelihood that they will be dismissed as a result of the California Settlement. However, the California Parties attached as Appendices to their request for rehearing excerpts from exhibits, prefiled testimony, transcripts and briefs from the proceedings in Docket No. RP00-241-000, and El Paso asserts that if the California Parties' request for rehearing is not ultimately dismissed, the Commission should reject this new evidence. If the Commission does not reject this new evidence, then El Paso requests an opportunity to respond to the evidence. The Commission will not consider these submissions, and, therefore, there is no need to provide El Paso an opportunity to respond.

26. On June 4, 2003, El Paso and the California parties<sup>28</sup> filed with the Commission in Docket No. RP00-241-000, CPUC v. El Paso,<sup>29</sup> a proposed Offer of Settlement (California Settlement) to resolve all of the issues raised by the California parties in that proceeding. Article 3 of the California Settlement provides that it also resolves all related claims and issues that were raised by the settling parties in the instant capacity allocation proceeding, including but not limited to allegations that El Paso violated its certificates and/or the 1996 Settlement, and that El Paso violated the NGA or the NGPA and/or the Commission's regulations or orders. In its request for rehearing in this proceeding, the California parties state that if that settlement and related settlements in the state and federal court in California are approved, they will inform the Commission of the resolution of those issues, but are filing this request for rehearing to preserve the issues.

### **Commission Determination**

27. On November 14, 2003, the Commission issued an order approving the California Settlement, subject to conditions.<sup>30</sup> This decision is pending before the Commission on rehearing. If the California Settlement becomes effective, then the "related claims" of the California parties in this proceeding concerning El Paso's violation of the NGA or NGPA, its certificate obligation and the 1996 Settlement will be resolved by that Settlement. The California parties' arguments on rehearing in this case concerning whether El Paso's use of pro rata allocation violated the Settlements and the Commission's regulations, whether El Paso had an obligation to expand its system, whether the 1996 Settlement obligated El Paso to make 3,290 Mcf/d of capacity available to California markets for the term of the Settlement, and whether El Paso withheld 210 Mcf/d of capacity to manage transients that should have been made available to its shippers fall within the "related claims" and will be resolved if the California Settlement becomes effective. The Commission therefore will not address these arguments at this time.<sup>31</sup>

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<sup>28</sup> In addition to El Paso, the CPUC and SoCalEdison, parties to this Settlement include El Paso Merchant Energy Company, Pacific Gas & Electric Co., and the City of Los Angeles, California.

<sup>29</sup> This proceeding involves, inter alia, allegations by the CPUC that El Paso manipulated California energy markets by withholding pipeline transportation capacity to drive up natural gas prices in the periods immediately before and during the California energy crisis of 2000-2001.

<sup>30</sup> 105 FERC ¶ 61,201 (2003).

<sup>31</sup> To the extent that the requests for rehearing are not resolved as a result of the California Settlement, the Commission will address the arguments in a separate order.

### **3. Clarification**

28. Indicated Shippers and SoCalGas request clarification of three aspects of the Rehearing Order. First, they ask the Commission to clarify a statement in the Rehearing Order that the 1996 Settlement and tariff provide that service to full requirements customers will be scheduled before service to CD customers.<sup>32</sup> These parties assert that this statement is true with regard to the FT-2 (small requirements) shippers, but not with regard to the FT-1 shippers. They state that after FT-2 shippers are scheduled, all other firm shippers are scheduled and allocated capacity on a pro rata basis. The Commission grants this request for clarification.

29. Second, Indicated Shippers and SoCalGas ask the Commission to clarify the application of demand charge credits during scheduled maintenance. These parties assert that El Paso's August 1, 2003 compliance filing treats service interruptions due to maintenance in the same manner as service disruptions for force majeure events and provides partial demand charge credits. Indicated Shippers and SoCalGas assert that this treatment is appropriate for unscheduled maintenance, but not for scheduled maintenance. The Commission agrees with Indicated Shippers and SoCalGas and has rejected El Paso's proposal to provide only partial demand charge credits for scheduled maintenance.<sup>33</sup> This resolves Indicated Shippers' and SoCalGas's concern.

30. Third, Indicated Shippers and SoCalGas request that the Commission establish a date certain for El Paso to comply with Order No. 637. In a January 28, 2004 Order in El Paso's Docket No. RP04-61-000,<sup>34</sup> the Commission directed El Paso to make a filing to comply with Order No. 637 by April 1, 2004.

## **B. Rehearing of the July 9 Compliance Order**

### **1. Issues Related to D-Codes**

31. In the July 9 Compliance Order, the Commission found that El Paso's proposed use of D-Codes was acceptable. Southwest argues that the Commission erred in this finding because D-Code capacity limitations produce unjust and

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<sup>32</sup> They cite the July 9 Rehearing Order at P 182.

<sup>33</sup> In an order issued November 28, 2003 in El Paso's Docket No. RP04-34-000, the Commission rejected El Paso's proposal to provide only partial demand charge credits for scheduled maintenance. 105 FERC ¶ 61,262 (2003).

<sup>34</sup> 106 FERC ¶ 61,050 (2004).

unreasonable service limitations. Further, Southwest argues that there is no operational justification for D-Codes and asks the Commission to reinstate the status quo whereby D-Codes are used as a scheduling convenience and do not limit service rights.

32. Southwest also argues that the Commission erred in the Compliance Order by not addressing scheduling and nominating flexibility tariff provisions to ameliorate the reduction of FR Shippers' service flexibility resulting from the FR conversion and additional D-Code limitations. Southwest states that former FR shippers need mechanisms that will allow them to duplicate at least some of the previous service flexibility provided by FR service.

### **Commission Determination**

33. Since the filing of Southwest's request for rehearing, in response to shippers' concerns, El Paso developed the "directional transfer scheduling" concept<sup>35</sup> and a new priority scheduling mechanism. This allows shippers to move among the points stated in their contracts on a "first alternate" basis without having to use the R-D Combos. On November 17, 2003, El Paso filed tariff sheets in Docket No. RP04-61-000 to implement these proposals. On January 28, 2004, the Commission accepted, subject to conditions, El Paso's proposals as reasonable interim measures to provide increased scheduling flexibility.<sup>36</sup>

34. To the extent that Southwest's request for rehearing asks the Commission to eliminate the use of D-Code limitations in scheduling, the request for rehearing is denied. In response to concerns raised at the technical conference, El Paso offered to consider consolidating D-Codes. In the January 29, 2004 Order on the technical conference, the Commission encouraged El Paso and its customers to continue to address this issue and to work to consolidate D-Codes.<sup>37</sup> The Commission stated that these issues are best resolved in the first instance between El Paso and its shippers, and the Commission would not at that time address issues related to any specific D-

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<sup>35</sup> Pursuant to directional transfer scheduling, El Paso will aggregate shippers' volumetric entitlements associated with their R-D Combos into separate east-west and north-south entitlements. Thus, for scheduling purposes, each contract will have a north-south transfer capacity entitlement and an east-west transfer capacity entitlement derived from the particular R-D Combo Maximum Daily Quantity stated in the shippers' transportation service agreements.

<sup>36</sup> 106 FERC ¶ 61,050 (2004).

<sup>37</sup> 106 FERC ¶ 61,083 at P 49.

Codes. The Commission has provided a forum in the technical conference proceeding to address the parties' concerns regarding service flexibility, including D-Code issues, and parties have an opportunity to seek rehearing of the Commission's January 29 Order on the technical conference.

## **2. Demand Charge Credits**

35. Southwest and ONEOK raise issues concerning demand charge credits. ONEOK refers to the Commission's finding that El Paso's proposal to base credits on confirmed nominations, rather than scheduled nominations as advocated by the protestors, is appropriate.<sup>38</sup> ONEOK states that this language implies that if El Paso does not confirm a nomination at a primary or alternate firm point, El Paso will not have any obligation to provide demand charge credits even if the failure to confirm the nomination was due to El Paso's inability to meet its obligation to provide firm service. ONEOK states that this is not consistent with the Commission's rulings that El Paso would be held responsible for the consequences of its actions, and asks the Commission to clarify that its statement does not conflict with the requirement that firm shippers must be able to nominate and have scheduled all capacity for which they have contracted and that if El Paso cannot provide that service, shippers will receive demand charge credits. If the Commission does not grant its request for clarification, ONEOK seeks rehearing on this issue.

36. The Commission grants ONEOK's request for clarification. If El Paso is unable to deliver requested transportation because it lacks sufficient capacity on its system to meet its contractual obligations, it is liable for demand charge credits. However, customers are responsible for following proper tariff procedures in making nominations, including upstream and downstream agreements that can be confirmed by El Paso.

37. Southwest asserts that the Commission erred in accepting El Paso's proposal to exclude from its obligation to pay demand charge credits demands that are attributable to Power-Up Project<sup>39</sup> capacity until that capacity is placed into service. Southwest

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<sup>38</sup> 104 FERC ¶ 61,044 at P 60.

<sup>39</sup> In the May 31 and September 20 Orders, the Commission directed El Paso to include the 320 MMcf/d of Power-Up Project capacity in the amount of capacity allocated to the FR shippers as their initial CD allocations. The Commission issued El Paso a certificate authorizing construction of the Power-Up Project to provide an additional 320 MMcf/d of capacity on its Line 2000. El Paso Natural Gas Co., 103 FERC ¶ 61,280 (2002). The in-service dates of the three phases of the Power-Up Project are February 2004 (120 MMcf/d), April 2004 (100 MMcf/d), and April 2005 (100 MMcf/d).



argues that the Commission has provided no basis for deviating from its existing policy and its ruling that El Paso must serve shipper nominations up to the new contract demand, or pay demand charge credits, except for force majeure situations.<sup>40</sup>

38. On November 13, 2003, the Commission issued an order<sup>41</sup> approving an uncontested settlement between El Paso and the former FR shippers concerning procedures for use of the capacity pool created to serve the needs of these shippers pending completion of the Power-Up Project.<sup>42</sup> This settlement provides that El Paso will pay demand charge credits for amounts equal to or less than a shipper's minimum reserve capacity pool quantity up to the total capacity in the pool that are properly nominated and confirmed but not scheduled. The settlement also provides that amounts above the shipper's minimum reserve capacity pool quantity up to the total capacity in the pool that are properly nominated and confirmed but not scheduled will be eligible for credits to the extent that the full capacity in the pool cannot be scheduled by El Paso. This settlement provides a reasonable accommodation between El Paso and its shippers by requiring El Paso to pay demand charge credits for a portion of the Power-Up Project capacity. The Commission will not require El Paso to provide demand charge credits for Power-Up Project capacity that is not included in the capacity in the reserve pool pending completion of the first two phases of the project. The request for rehearing is denied.

### **3. Yuma Lateral Constraints**

39. Southwest argues that the July 9 Orders fail to address Yuma lateral constraint issues. Southwest states that the Commission approved an allocation of capacity by El Paso that oversubscribes El Paso's Yuma Lateral.<sup>43</sup> Southwest asserts that this problem could have been avoided because the oversubscription is largely caused by

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<sup>40</sup> Southwest cites the Compliance Order at P 61.

<sup>41</sup> 105 FERC ¶ 61,189 (2003).

<sup>42</sup> In the July 9 Rehearing Order, the Commission directed El Paso to establish a reserve pool of 110 MMcf/d of capacity for the converting FR shippers to use until El Paso places into service the first two phases of the three phases of its Power-Up Project. 104 FERC ¶ 61,045 at P 152-154.

<sup>43</sup> Southwest cites El Paso's August 1 compliance filing where El Paso explains that potential delivery lateral constraints were not used as a limiting factor when allocating mainline rights because non-coincident peak usage on laterals is expected to continue.

APS's redesignation of delivery quantities from other points to the Yuma lateral. Southwest states that demand charge credits are insufficient to address this problem because it undercuts the service integrity of the system established by the July 9 Orders.

40. APS responds that it did not request an after-the-fact reallocation, but followed procedures established by El Paso. Further, APS states that it has relied on its allocation. APS states that the Commission should reject Southwest's request and direct El Paso to address in its Order No. 637 filing the method by which it intends to honor its obligation to serve all its former FR shippers on its laterals.

### **Commission Determination**

41. After the initial allocation, El Paso provided shippers with an opportunity to redesignate volumes among their delivery points. The letter providing for this opportunity stated that "[o]ne full requirements shipper's re-designation among its D-Codes must not adversely affect other shippers' receipt rights."<sup>44</sup> To the extent El Paso's redesignation of additional volumes to APS's delivery points on the Yuma lateral had the effect of oversubscribing of that lateral, and therefore adversely affecting the rights of Southwest, El Paso should have denied APS's request for redesignation. To the extent an oversubscription has occurred, El Paso must now reallocate APS's volumes accordingly. As the Commission stated in its October 27, 2003 Order in this proceeding,<sup>45</sup> El Paso must not contract for more firm service than it can reliably provide.

### **4. Route Quantities**

42. El Paso seeks rehearing of the Commission's rejection of the use of Route Quantities in its tariff. In a subsequent compliance filing, El Paso removed the Route Quantities concept and instead proposed use of R-D Combos. El Paso's proposal to use R-D Combos was accepted as a temporary measure in the January 29, 2004 Order. El Paso's request for rehearing on this issue is therefore moot.

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<sup>44</sup> El Paso's letter to its shippers dated March 17, 2003.

<sup>45</sup> 105 FERC ¶ 61,130 at P 41 (2003).

The Commission orders:

The requests for rehearing are granted and denied as set forth in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.